THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26614 OF 2005

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Dated: 13-12-2005

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Between

V. Ranga Rao S/o. Lingaiah, R/o. H.No.54-1-14/18, Gazetted Officers Colony, Near Mahalakshmi Apartments, Isukathota, Visakhapatnam – 530 022.

...PETITIONER

AND

The Superintendent Engineer, Operation Circle, Visakhapatnam and others.

...RESPONDENTS

ORDER:

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Petitioner seeks a Writ of Mandamus to declare the impugned Provisional Assessment Notice dated 27.08.2005 vide Lr.No.ADE/C&O/DPT/F/D.No.1153/05 issued by the fourth respondent as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner is the tenant in respect of shop No.1 situated in N.D.R. Complex of first floor Plot No.253-A of T.P.No.91/50 of Dwarakanagar, Visakhapatnam owned by Smt. Kakarala Sree Latha. It is stated that the plot of

Smt. K. Sreelatha is at fourth floor but the service connection bearing No.215447 category II in respect of the said plot is situated at first floor.

However, the question that arises for consideration is whether the said service

connection to which Smt. K. Sreelatha is the owner can be disconnected by provisionally estimating the value of energy misused by her at Rs.1,09,461/- directing the owner to deposit half of the said amount to avoid disconnection.

Learned counsel for the petitioner further submits that prior to the impugned notice during the course of inspection on 10.06.2005
it was observed that the consumer has not installed the required capacitors and thirty days capacitor surcharge notice dated 10.06.2005 was served. It is further submitted that on their instructions though the capacitors have been installed on 15.07.2005 the capacitor surcharge is also levied in the impugned notice.

Section 126 of the Electricity Act, 2004 (for short 'the Act') provides making a provisional assessment order, the same shall be served upon the person in occupation or possession or in charge of the place under Section 126(2) of the Act and after serving the provisional assessment order, the person is entitled to file objections against the said order and after giving reasonable opportunity only the final order has to be passed in accordance with law under Section 126(6) of the Act, against which an appeal lies to the appellate authority under Section 127 of the Act. In the instant case without giving any reasonable opportunity either to the petitioner who is the tenant or to the landlady by reason of passing impugned notice the respondents are threatening to disconnect the supply.

Having regard to the facts and circumstances of the case, the impugned Provisional Assessment Notice dated 27.08.2005 issued by the sixth respondent is directed to be treated as a show cause notice permitting the petitioner to file explanation/representation within ten days from today and on such explanation/representation being filed, the sixth respondent may consider and pass final orders in accordance with law after giving reasonable opportunity to the petitioner and till then the service connection may not be disconnected subject to the condition that the petitioner continues to deposit the regular consumption charges.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

December 13, 2005

DSK